

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALEX DELGADO,
Petitioner,

v.

KATHLEEN M. DENNEHY,
COMMISSIONER OF CORRECTION,
Respondent.

Civil Action No. 04-30124-MAP

RESPONDENT'S MOTION TO DISMISS

In accordance with Rule 11 of the Rules Governing Section 2254 Cases and Rule 12(b)(6) of the Federal Rules of Civil Procedure, the respondent, by and through her counsel, the Attorney General of the Commonwealth of Massachusetts, hereby respectfully moves to dismiss the petition for a writ of habeas corpus filed by the petitioner, Alex Delgado for failure to state a claim upon which habeas corpus relief can be granted. 28 U.S.C. § 2254.

The respondent relies on an accompanying memorandum of law in support of her motion to dismiss.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Annette C. Benedetto
Annette C. Benedetto
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200

BBO No. 037060

CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.1 (A) (2) , the respondent's attorney certifies that she left a message with the office of the petitioner's counsel, John Thompson, on August 25, 2006, relative to the motion to dismiss.

**/s/ Annette C. Benedetto
Annette C. Benedetto
Assistant Attorney General**

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the Electronic Case Filing system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on the date set forth below.

August 25, 2006

**/s/ Annette C. Benedetto
Annette C. Benedetto
Assistant Attorney General**